

**Board Approved on 11/14/11**

**Procedure Governing Disciplinary Proceedings and Other Dispositions:**  
**Administrative Penalties; Adjudicatory Hearings**

**General**

- A Licensed Site Remediation Professional who, individually or in concert with another person, violates any provision of N.J.S.A. 58:10C-1 et seq, including but not limited to the provisions set forth in N.J.S.A. 58:10C-14 (Certification and Standards Hierarchy), 58:10C-16 (26 Professional Conduct Items), 58:10C-20 (Maintenance of Data, Documents and Information), 58:10C-24 (Required Compliance with Audit), 58:10C-26 (Retaliatory Action Against an LSRP is Prohibited) shall be subject to the disciplinary authority of the Board.
- A Licensed Site Remediation Professional shall not individually or in concert with another person harass a complainant or take any action which may hinder the Board's investigation of a complaint contrary to the Licensed Site Remediation Professional's obligation to cooperate fully with an investigation as set forth in N.J.S.A. 58:10C-16q.
- In addition, any person who is not a Licensed Site Remediation Professional but who holds himself out to be, or represents himself as being, a Licensed Site Remediation Professional shall be in violation of the provisions of N.J.S.A. 58:10C-11, and shall be subject to disciplinary action by the Board. Such complaints may be referred to the Office of Attorney General for possible criminal prosecution.
- Any person or any member of the Board may file a complaint with the Board charging a Licensed Site Remediation Professional with misconduct;
  - Misconduct as referenced herein shall include, but not be limited to, an action or omission which:
    - violates any statute, regulation, permit, or other license relevant to the activities for which such licensee is responsible;
    - endangers or may endanger human health, safety, welfare or the environment;
    - falsifies, misrepresents or negligently fails to disclose any relevant fact at any time, including, without limitation, in an application for a license or license renewal, in response to a request for information by the Board, or in a report, opinion or certification;

- fails to comply with a request by the Board for any information relevant to any application, license, report or other documents submitted to the Board;
  - demonstrates a lack of good moral character, evidence of which may include, conviction in any jurisdiction of a felonious act, environmental crime, or any similar criminal offense, any crime involving fraud, theft by deception, forgery, the submission of false or incomplete information on any application, acts involving dishonesty, fraud or deceit which have substantial connection to the professional responsibilities of a licensed site remediation environmental professional.
- Person as used herein is defined as an individual, public or private corporation, company, limited liability company, association, society, firm, partnership, joint stock company, the State and any of its political subdivision or agents.
  - Regardless of whether misconduct has occurred, the Board may take any action allowed by law, including but not limited to suspending or revoking a license, if the Board finds that a licensed site professional is unable to perform the essential functions of a Licensed Site Remediation Professional in accordance with the requirements of N.J.S.A. 58:10C-1 et seq. and the regulations promulgated thereto.
  - Nothing contained in this process shall contravene or in any way contradict the Board's obligation to comply with New Jersey's Open Public Records Act (OPRA) at N.J.S.A. 47:1A-1 et seq.

### **Initiation**

- In the event a person (which includes the DEP or a Board member as defined above) initiates a complaint, the staff to the Board will record, document and acknowledge the complaint, and forward the complaint to the Board's Professional Conduct Committee (hereinafter the Committee) to review and process.
- Complaints from DEP shall be referred to the Board from the Assistant Commissioner's Office only, not from DEP staff members. Any standing committee of the Board may make a complaint directly to the Professional Conduct Committee to be addressed pursuant to the procedures established herein.

## **Investigation**

- Board members are obligated to follow the conflict of interest provisions enumerated in the New Jersey Conflict of Interest Law, the State Ethics Commission Regulations and the Board's By-Laws adopted on January 10, 2011. These provisions require members of the Board to recuse themselves in the event of a conflict of interest.
- The Committee shall review every complaint and determine if the complaint is with or without merit. All complaints that come to the Board through the Assistant Commissioner's office or from one of the Board's standing committees shall be deemed to have merit.
- The Board does not encourage anonymous complaints and will not solicit them; however, in the event the Board does receive an anonymous complaint, the Professional Conduct Committee will determine whether or not to accept the anonymous complaint for further review in accordance with a majority vote of the Committee, and in making that decision the Committee will determine the basis upon which that complaint is made. If the Committee decides not to accept the complaint, the Committee will recommend to the Board the dismissal of the Complaint as a complaint without merit to be addressed pursuant to the procedures established herein.
- If the Committee determines that the complaint is without merit, it shall make a recommendation to the Board that the complaint should be dismissed.
- The Board shall then decide by a 2/3 vote of the presently confirmed members of the Board whether to accept the recommendation of the Committee and dismiss the complaint.
  - If the Board votes to dismiss the complaint, the Board shall notify the Licensed Site Remediation Professional and the complainant that the complaint has been dismissed. A summary of the complaint and the reason(s) for dismissal shall be public record; however, the name of the Licensed Site Remediation Professional shall not be published by the Board.
  - If the Board does not vote to dismiss the complaint, the complaint is remanded to the Professional Conduct Committee for further review. The Professional Conduct Committee may appoint a Complaint Review Team pending reconsideration of the matter, or they may reaffirm a dismissal recommendation to the Board.

- If the Committee determines that the complaint is merited, it shall convene a Complaint Review Team to undertake an investigation of the conduct of the Licensed Site Remediation Professional.
- The Complaint Review Team shall be comprised of one Board member who shall be a Licensed Site Remediation Professional, one Board member who is not a Licensed Site Remediation Professional and the Staff Attorney to the Board. Members of the Complaint Review Team shall be appointed by the Chairman of the Professional Conduct Committee. The Complaint Review Team shall be appointed by the Chairman of the Committee for each complaint that is pursued by the Board.
- After a Complaint Review Team is convened, the Board Secretary shall notify the Licensed Site Remediation Professional that a complaint has been received. The notification letter may include a request for information from the Licensed Site Remediation Professional, or a request for information may be made in a separate communication. The Licensed Site Remediation Professional will be notified of a complaint and the complainant by sharing with the Licensed Site Remediation Professional the complaint form filed by the complainant. A Licensed Site Remediation Professional shall not individually or in concert with another person harass a complainant or take any action which may hinder the Board's investigation of a complaint contrary to the Licensed Site Remediation Professional's obligation to cooperate fully with an investigation as set forth in N.J.S.A. 58:10C-16q.
- Upon completion of its investigation the Complaint Review Team shall prepare a report to the Committee which contains the following information:
  - A summary of the findings of the investigation;
  - An opinion as to the validity of the complaint;
  - The grounds, if applicable, for disciplinary action;
  - A recommendation, if applicable, as to the type of disciplinary action along with the basis for this recommendation.
- The Professional Conduct Committee will review the findings and recommendations of the Complaint Review Team and present the Team's report to the Board in closed session with its own recommendation to the Board. In this closed session, the identity of the complainant and the Licensed Site Remediation Professional shall NOT be disclosed to the Board. Except for the members of the Complaint Review Team, the Board members will be informed of the name of the complainant and Licensed Site Remediation Professional only after final action has been taken by the Board.
- Following review and discussion of the report by the Board, the Board shall take one of the following actions with regard to the complaint. The Board may by a majority vote:

- Refer the complaint back to the Professional Conduct Committee for further investigation providing specificity as to what issues the Board wishes further information. Following further investigation, the Complaint Review Team shall prepare a report as discussed above and report back to the Board,
- Dismiss the complaint with or without admonition with the reasons for the dismissal being placed on the record; or
- Issue an administrative order, order of revocation, or order of suspension as outlined in N.J.S.A. 58:10C-17 and the regulations promulgated thereto.
- In the event the Board refers the complaint back to the Professional Conduct Committee for further investigation, the identity of the Licensed Site Remediation Professional who is the subject of the complaint shall remain confidential.
- If the Board dismisses the complaint or issues an order consistent with N.J.S.A. 58:10C-17 and the regulations promulgated thereto, a summary of the complaint and its disposition, along with the name of the Licensed Site Remediation Professional, shall be placed on the record and made available on the Board's web site.

### **Penalties (See N.J.S.A. 58:10C-17)**

#### **Types of Discipline**

- Upon a finding of a violation of any of the provisions of N.J.S.A. 58:10C-1 et seq., or any regulation promulgated hereto, the Board may:
  - Suspend or revoke the license of a Licensed Site Remediation Professional or impose another penalty on the Licensed Site Remediation Professional as determined by the Board.
  - Issue warnings and letters of reprimand with or without a civil administrative penalty;
  - Bring a civil action;
  - Issue an administrative order;
  - Bring an action for a civil penalty;
  - Assess a civil administrative penalty; or
  - Petition the Attorney General to bring a criminal action

- The exercise of any of the remedies described above shall not preclude recourse to any other remedy so provided.
- Any final action taken by the Board is considered a public record.

### **Civil Penalties**

- The Board may assess a civil administrative penalty of not more than \$10,000 for a first violation and not more than \$20,000 for every subsequent violation of the provisions of N.J.S.A. 58:10C-1 et seq. or any rule, regulation, code of conduct, or order adopted or issued pursuant thereto.
- Any person who violates N.J.S.A. 58:10C-1 et seq. or any rule, regulation, code of conduct, or order adopted or issued pursuant thereto, or who fails to pay a civil penalty or civil administrative penalty in full or to agree to a schedule of payments therefore, shall be subject, upon order of a court, to a civil penalty not to exceed \$10,000 for a first violation and not more than \$20,000 for every subsequent violation.
- Pursuant to N.J.S.A. 58:10C-17, the Board may institute an action in Superior Court to obtain a temporary injunction against a Licensed Site Remediation Professional or to recover the reasonable costs of the investigation which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the violation.

### **Factors to be Applied in Determining Type of Disciplinary Action and Amount of Penalty**

- The Board shall consider the following factors in determining the type of disciplinary action, including the amount of any monetary penalty if applicable:
  - the actual and potential impact on public health, safety, and welfare, and the environment, of the failure(s) to comply that would be penalized;
  - the state of mind of the of the person who would be assessed the penalty such as whether their actions demonstrate a willful act to violate, a wanton disregard or negligence;
  - the actual and potential damages suffered, and actual or potential costs incurred, by the State of New Jersey or by any other person, as a result of the failure(s) to comply that would be penalized;
  - whether the person who would be assessed the penalty took steps to prevent the failure(s) to comply that would be penalized;
  - whether the person who would be assessed the penalty took steps to promptly come into compliance after the occurrence of the failure(s) to comply that would be penalized;

- whether the person who would be assessed the penalty took steps to remedy and mitigate whatever harm might have been done as a result of the failure(s) to comply that would be penalized;
- whether the person being assessed the penalty has previously failed to comply with any regulation, order, or license issued or adopted by the Board, or any law which the Board has the authority or responsibility to enforce;
- deterring future noncompliance by the person who would be assessed the penalty;
- the public interest; and
- any other factor(s) that reasonably may be considered in determining the amount of a penalty, provided that said factor(s) shall be set forth in the Notice of Administrative Penalty Assessment or any such other Order issued by the Board.

#### **Adjudicatory Proceedings (See N.J.S.A 58:10C-17)**

- A Licensed Site Remediation Professional who has received a Disciplinary Order, Order of Revocation or Order of Suspension by the Board, may request an adjudicatory hearing before an Administrative Law Judge by sending a notice to the Department of Environmental Protection Office of Legal Affairs, along with a completed copy of an Administrative Hearing Checklist. The notice shall state clearly and concisely the facts that are grounds for the proceedings and the relief sought. The notice shall be filed with the Department within 35 days from the date that the Licensed Site Remediation Professional receives notice of the Board's Order.
- If a request for a hearing is not filed within 35 days as described above, the Licensed Site Remediation Professional shall be considered to have waived his or her right to a hearing and the Order as described above shall be considered final.
- The hearing shall be conducted in accordance with the requirements set forth in the Administrative Procedure Act.

